Supreme Court, U.S.
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NO.

IN THE

Supreme Court of the United States

PETER ROEHSLER,
Petitioner

V.

MIDDLESEX COUNTY HEALTH DEPARTMENT

On Petition For Writ Of Certiorari
To The Supreme Court of New Jersey

PETITION FOR WRIT OF CERTIORARI

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40 pp

QUESTIONS PRESENTED

1. Whether N.J.S.A. 13:1D-9d, which gives the government the power to enter any building or place, at any time, without a search warrant and based on nothing more than a suspicion of an environmental violation, that need never be articulated in any way, is offensive to and violates the Fourth and Fourteenth Amendments to the United States Constitution.
2. Whether N.J.S.A. 34:5A-29b, in which the government gives itself the right to enter any employer's facility without a search warrant and with no restriction other than that it be done during normal operating hours, violates the Fourth and Fourteenth Amendments to the United States Constitution.
3. Whether N.J.A.C. 7:1G-1.5, which authorizes the government to enter any business premises or building without a search warrant, while requiring nothing more than the presentation of credentials, and provides for criminal penalties against anyone who resists, violates the Fourth and Fourteenth Amendments to the United States Constitution.
4. Whether the New Jersey Supreme Court violated this petitioner's constitutional rights under the Fifth and Fourteenth Amendments to the United States Constitution by upholding the assessment of $5,000 in fees against him without affording him the opportunity to be heard to protect and enforce his rights.

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In the Supreme Court of the United States

No. _____

PETER ROEHSLER,
Petitioner,
v.

MIDDLESEX COUNTY HEALTH DEPARTMENT

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Peter Roehsler respectfully requests that this Court issue a writ of certiorari to review the judgement of the Supreme Court of the State of New Jersey dismissing this petitioner's Appeal as of Right and his Petition for Certiorari to the Appellate Court thus upholding the constitutionality of N.J.S.A. 13:1D-9d, N.J.S.A. 34:5A-29b and N.J.A.C. 7:1G-1.5 and, as well, upholding the Appellate Division of the New Jersey Superior Court, that found that petitioner's Fifth and Fourteenth Amendment rights had not been violated.

Opinions Below

None of the opinions below have been reported. The opinions of the New Jersey Supreme Court, the Appellate Division of the Superior Court of New Jersey and the New Jersey Superior Court are

reproduced in the Appendix to this petition. App.,*infra*, 1a-9a.

Jurisdiction

The judgement of the New Jersey Supreme Court was rendered on October 17, 2002. This petition is filed within the ninety day time limit provided by Rule 13 of the Rules of this Court. This Court's jurisdiction is invoked under 28 U.S.C. 1257 (a) and Rule 10(c) of the rules of this Court.

Because 28 U.S.C. 2403(b) may apply, three copies of this petition and appendix have been served on David Samson, Attorney General for the State of New Jersey.

Constitutional and Statutory Provisions Involved
(reproduced at Appendix, *infra*, 14a-16a)

1. United States Constitution, Fourth Amendment
2. United States Constitution, Fifth Amendment
3. United States Constitution, Fourteenth Amendment
4. New Jersey Statutes Annotated 13:1D-9d
5. New Jersey Statutes Annotated 34:5A-29b
6. New Jersey Administrative Code 7:1G-1.5
7. New Jersey Court Rule 4:42-1(c)

STATEMENT OF THE CASE

Introduction

On or about October 2, 2000, a Middlesex County Health Department investigator was conducting recycling generator inspections in the Borough of Sayreville, New Jersey, and noticed that petitioner's property, commonly known as Viking Terminal, was not on his list of places to inspect. He nevertheless proceeded onto the property and commenced his search whereupon he was confronted by petitioner's daughter, Kersten, who ordered him to leave the property, which he did. Upon his entry onto the property the investigator passed an 8 foot by 10 foot bright yellow sign admonishing "NO TRESSPASSING, Private Property."

Petitioner's property comprises approximately sixty acres where he operates his businesses and rents to many tenants. He also has made his home there for twenty-eight years. The public is barred from entering the property.

The petitioner refused to give consent to a warrantless inspection or search of his property. Subsequently, the county corresponded with your petitioner via letter, facsimile and telephone conversations wherein the county threatened litigation. The petitioner merely asserted his rights under the Fourth Amendment to the United States Constitution and insisted that the county obtain a search warrant.

The order to show cause

On January 10, 2001, the Middlesex County Health Department filed a verified complaint in the Superior Court of New Jersey and an order to show cause against your petitioner, demanding an order permitting them to inspect petitioner's property without a warrant. Their case, in chief, was based on N.J.S.A. 13:1D-9a, N.J.S.A. 34:5A-29b and N.J.A.C. 7:1G-1.5, all of which permit the government to enter private property without a search warrant.

On January 29, 2001, this petitioner filed a timely answer to the verified complaint. On February 16, 2001, a hearing was held wherein the petitioner asserted his constitutional right to be free from warrantless searches. The constitutional issues were raised by the petitioner in letter memorandum and oral argument. (2/16/01 Tr. 9) The court responded that "... understand that while the constitution certainly is a good document..." that "...this isn't going to be a constitutional law symposium." The hearing ended with the matter being adjourned. 2/16/01 Tr. 27 & 29.

On July 6, 2001, the adjourned hearing was continued and petitioner once again asserted his right to be free of warrantless searches. The court held that there was a connection between the highly regulated solid waste industry and the non-highly regulated businesses operated by petitioner and other non-highly regulated businesses that rent from him and for that

narrow reason, it would order that the inspection could proceed without a warrant.

On July 13, 2001, the Middlesex County Health Department's attorney submitted a proposed form of order that did not conform to the court's ruling in that it provided for your petitioner to pay $12,490.46 in fees to the county. Absolutely no mention of costs or fees had been brought up by anyone in open court when the ruling was handed down. Petitioner timely objected to the proposed form of order, but the court signed it over his objection and, with no further hearing, reduced the fee award to $5,000.

The Appeals

On November 13, 2001, your petitioner timely filed an appeal to the Appellate Division of the New Jersey Superior Court. That appeal again asserted petitioner's right to be free from warrantless searches and also asserted his right to due process, which he contended had been violated in the trial court by depriving him of $5,000 without a hearing.

The county filed a reply brief which asserted that the proposed form of order it submitted was conforming (to the court's ruling). Your petitioner properly responded according to court rules that the proposed form of order was not conforming.

On June 11, 2002, the Appellate Court ruled that petitioners arguments were without sufficient merit to warrant discussion on the record. It did however comment that the county's order was conforming and that the petitioners rights were not violated because he did not specifically request a hearing.

On July 11, 2002, this petitioner timely filed an Appeal as of Right and a Petition for Certiorari to the Appellate Division of the New Jersey Superior Court. Petitioner again asserted his rights under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States. On October 17, 2002 that court dismissed without comment both the Appeal as of Right and the Petition for Certiorari.

This petition for certiorari challenges the decision of the New Jersey Supreme Court to dismiss your petitioner's Appeal as of Right and his Petition for Certiorari to the Appellate Division of the New Jersey Superior Court and let stand the rulings of that court.

REASONS FOR GRANTING THE WRIT

1. The decision below directly conflicts with numerous decisions of this Court which should have been dispositive of the case against petitioner. The rights of the people are eroded little by little and this Court should use its power to stop it.

In *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973), Mr. Justice Stewart, speaking for the Court said:

> "The needs of law enforcement stand in constant tension with the constitution's protections of the individual against certain exercises of official power. It is precisely the predictability of these pressures that counsels a resolute loyalty to constitutional safeguards. It {413 U.S. 266, 274} is well to recall the words of Mr. Justice Jackson, soon after his return from the Nuremberg Trials:
>
> "These {Fourth Amendment rights}, I protest, are not mere second class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government." *Brinegar v. United States*, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting).

The New Jersey Supreme Court has not addressed the issue of warrantless administrative inspections or searches in any reported opinions.

The Appellate Division of the New Jersey Superior Court has addressed it only once in *State v. Dolce*, 178 N.J. Super. 275, 278 A.2d 947 (App. Div. 1981). In that case its ruling comported with this Court by holding that an administrative search of private property without proper consent is generally held unconstitutional unless it has been authorized by a valid search warrant. That opinion was ignored by all of the courts below.

N.J.S.A. 13:1D-9 is unconstitutional on it's face because it empowers the government to enter into any building or place (obviously this includes private homes, houses of worship, etc.), at any time, without benefit of warrant or probable cause and based merely on some perceived suspicion of a government official with no constraints on when or how the search may be conducted or even that it is reasonable in any way.

> "The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:
>
> (d) Enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the enviornment and ascertaining compliance or noncompliance with any codes, rules and regulations of the department." N.J.S.A. 13:1D-9d

It is patently offensive to the American experience to have a government that has empowered itself to search any place based on nothing more than

an unarticulated suspicion. A government officer could say he was driving past a home or business and on the barest of suspicion that something seemed amiss for some reason he could enter and search. He need never articulate his suspicion or, if he is for some reason compelled to, he can make up his story after the fact. This is precisely why we need the Fourth Amendment protections, so that the government officer must set forth his story before the fact and that he be under oath or that his statement is otherwise sworn to. It is flatly unreasonable to permit a government to search on nothing more than a naked suspicion that need not be articulated in any way, either before or after the fact, and goes against everything our constitution has guaranteed us.

The framers of our constitution inserted language which is abundantly clear: "the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures shall not be violated..." *Fourth Amendment to the United States Constitution.* The protection is afforded to every citizen and, as well, to businessmen and women. This proposition has been consistently upheld by this Court. In *Marshall v. Barlow's Inc.*, 436 U.S. 307, 98 S.Ct. 181, 56 L.Ed.2d 305 (1978), Mr. Justice White, speaking for the court, said:

> "The Warrant Clause of the Fourth Amendment protects commercial buildings as well as private homes. To hold otherwise would belie the origin of that Amendment, and the

American colonial experience... '[T]he Fourth Amendment's commands grew in large measure out of the colonists' experience with the writs of assistance...[that] granted sweeping power to customs officials and other agents of the king to search at large for smuggled goods.' *United States v. Chadwick*, 433 U.S. 1, 7-8 (1977) [436 U.S. 307, 312] See also *G.M. Leasing Corp. v United States*, 429 U.S. 338, 355 (1977). Against this background, it is untenable that the ban on warrantless searches was not intended to shield places of business as well as of residence."

"This Court has already held that warrantless searches are generally unreasonable, and that this rule applies to commercial premises as well as homes. In *Camara v. Municipal Court*, [387 U.S. 523 (1967)] , at 528-529 we held:

'[E]xcept in certain carefully defined classes of cases, a search of private property without proper consent is 'unreasonable' unless it has been authorized by a valid search warrant.'

On the same day, we also ruled:

'As we explained in *Camara*, a search of private houses is presumptively unreasonable if conducted without a warrant. The businessman, like the occupant of a residence, has a

constitutional right to go about his business free from unreasonable official entries upon his private commercial property. The businessman, too, has that right placed in jeopardy if the decision to enter and inspect for violation of regulatory laws can be made and enforced by the inspector in the field without official authority evidenced by a warrant." *See v. Seattle*, 387 U.S. 541 (1967), at 543.

In the case at bar, the county investigator found that petitioner's property was not on his list of places to inspect and arbitrarily decided to inspect or search it. In the eight years since recycling generator inspections began, Viking Terminal had never been inspected, so we cannot possibly conclude that there was any regularity to the inspections. It was clearly the arbitrary decision of the officer in the field to attempt the inspection. In *Donovan v. Dewey*, 452 U.S. 594, 101 S.Ct. 2534, 69 L.Ed.2d. 262 (1981) Mr. Justice Marshall, speaking for the court, said:

> "...the Act does not provide any standards to guide inspectors either in their selection of establishments to be searched or in the exercise of their authority to search. The statute instead simply provides that such searches must be performed 'at...reasonable times, and within reasonable limits and in a reasonable manner.' "

> "In assessing this regulatory scheme, this Court found that the provision authorizing administrative searches "devolves almost unbridled discretion upon executive and administrative officers, particularly those in the field, as to when to search and whom to search." 436 U.S., at 323. Accordingly, we concluded that a warrant was constitutionally required to assure a nonconsenting owner, who may have little real expectation that his business will be subject to inspection, that the contemplated search was 'authorized by statute, and...pursuant to an administrative plan containing specific neutral criteria.'" Ibid.

What happened here is clearly offensive to the constitution and the prior holdings of this Court because there was no regularity to the inspection and it was the result of an arbitrary decision of the inspector in the field.

Although they apply to places of business and not private homes, N.J.S.A. 34:5A-29b and N.J.A.C. 7:1G-1.5 are unconstitutional for essentially the same reasons as discussed above, but neither one requires even a suspicion in order for the government to search. All a government officer need do is show up and present his credentials whereupon he is free to search any building or place at will.

N.J.A.C. 7:1G-1.5 provides that "Failure to permit such

inspection after presentation of official credentials is a criminal offense punishable under N.J.S.A. 2C:29-1" which is "Obstructing the administration of law or other governmental function." Although petitioner was not charged under this statute, the $5,000 in fees that were assessed against him constitute a very substantial penalty, which exceeds by fifty-fold the penalty assessed against *Camara* that this Court held unconstitutional . It would be a flight of fancy to suggest that the fees assessed against this petitioner without a hearing are not a penalty, disguised perhaps, but a penalty for asserting his constitutional rights nonetheless.

In *Camara v. Municipal Court, supra,* Mr. Justice White, speaking for the Court, said:

> "Yet, only by refusing entry and risking a criminal conviction can the occupant at present challenge the inspector's decision to search. We simply cannot say that the protections provided by the warrant procedure are not needed in this context; broad statutory safeguards are no substitute for individualized review, particularly when those safeguards may only be invoked at the risk of criminal penalty."

The cited statutes and the administrative code (which carries the full force and effect of law) are unconstitutional on their face, not for narrow reasons, but for articulated and egregious constitutional violations. It was error for the courts below to grant the warrantless inspection of petitioner's property.

2. To hold that a mere connection to a highly regulated business (as nothing more than a customer) raises a non-highly regulated business to the same level as a highly regulated one is absurd. This reasoning effectively strips all businessmen and women of constitutional protection.

The only opinion we have to consider here is the oral ruling of the Superior Court of New Jersey (App., *infra*, 5a-8a) which has not been modified by any higher court. That opinion is somewhat tortured because it tries to confine itself to this petitioner and his tenants, but it clearly applies to any business. Nonetheless, why should the petitioner's non-highly regulated businesses and the various other non-highly regulated businesses that rent space from him be singled out and have their constitutional rights taken away from them?

This Court has dealt with the definition of highly regulated industries and has distinguished them from ordinary businesses by a long tradition of government supervision of which any person who enters that business must be aware.[1] The businessman in a highly regulated industry in effect consents to the restrictions placed upon him. The fact is, it amounts to a contract

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[1] See *United States v. Biswell*, 406 U.S. 311, 92 S.Ct. 1593, 32 L.Ed.2d 87 (1972) (firearms dealers); *Colonnade Catering Corp., v. United States*, 397 U.S. 72, 90 S.Ct. 744, 25 L.Ed.2d 60 (1970) (liquor dealers); *Donovan v. Dewey*, 452 U.S. 594, 101 S.Ct. 2534, 69 L.Ed.2d. 262 (1981) (mine/quarry operators); *New York v. Burger*, 482 U.S. 691, ?? S.Ct. 2636, 96 L.Ed.2d 601 (1987) (automobile junkyard operator)

between the business and the government wherein the businessman consents to inspections as a condition to obtain his license to ply his trade, which of course confers onto him the benefits of being so licensed.

The government's right to enter a highly regulated business is limited to the regulated activities involved. It is not an unfettered authority to search for whatever it chooses or wherever it chooses. The Middlesex County Health Department may well have the authority to enter and inspect businesses engaged in the solid waste industry, but this in no way gives it any right to enter any business at will. If the proposition that the county health department has the right to enter any building or place at any time were accepted, we would have a super agency whose powers exceed anything this country has ever seen and whose existence nullifies the Constitution of the United States.

A highly regulated business, long subject to intense government supervision is just that. Even the most creative construction will not permit the inclusion of non highly regulated businesses into that class for the purpose of denying their constitutional rights or for any reason.

This Court has dealt with a tortuous effort to broad brush all businesses as being highly regulated in *Marshall v. Barlow's Inc.* There the Secretary of Labor sought to support a conclusion that all businesses effecting interstate commerce have long been subject to close supervision of employee safety and health

conditions. He also sought to convince the Court that the imposition of minimum wages and maximum hours on employers who contracted with the government under the Walsh-Healy Act, prepared the entirety of American interstate commerce for regulation of working conditions to the minutest detail. This Court was not convinced and held that:

> "Nor can any but the most fictional sense of voluntary consent to later searches be found in the single fact that one conducts a business effecting interstate commerce, under current practice and law, few businesses can be conducted without having some effect on interstate commerce." *Marshall vs. Barlow's, supra*

Indeed even fewer businesses can be conducted without generating some garbage. To allow warrantless searches of non highly regulated businesses simply because they generate some garbage contradicts the holdings of this Court. Because no assertion has ever been made that any of the businesses at Viking Terminal are highly regulated, we need not explore that issue further.

3. The New Jersey Courts have denied this petitioner's right to due process in violation of the Fifth and Fourteenth Amendments by assessing $5,000 in fees against him without a hearing .

When the trial court entered its ruling allowing a warrantless search, it instructed the attorney for the Middlesex County Health Department to prepare a form of order. This instruction is standard in the New Jersey Superior Court, where the prevailing attorney is instructed to prepare a proposed form of order that conforms to the court's ruling. County's attorney prepared a proposed form of order that awarded itself $12,490.36 in fees and costs against petitioner. The matter of fees and costs were not raised in court and the proposed form of order did not conform to the court's ruling because that ruling made no mention of fees. According to court rules, petitioner timely objected to the award of fees. The court, over petitioner's objection and without affording him the opportunity to be heard, awarded the county health department $5,000.

The Appellate Division of the New Jersey Superior Court commented that the form of order submitted by the county health department was conforming, when in fact it was not, and that petitioner was not entitled to a hearing because he did not specifically request one.

The Chief Judge of the Appellate Division of the New Jersey Superior Court, Sylvia Pressler, has written in her universally accepted comment to the New Jersey Court Rules that "It is, of course, clear that an order should never be either submitted or signed under this rule unless it memorializes court dispositions, follows a default or has all parties' consent endorsed thereon."

PRESSLER, Current N.J. COURT RULES, comment R.4:42-1(c)(GANN). Clearly the county's proposed form of order did not memorialize the court's ruling and the form of order should never have been either submitted or signed. Petitioner has been denied due process of law by the New Jersey Court's under their own rules.

The Appellate Division of the Superior Court of New Jersey, whose opinion was not modified by the New Jersey Supreme Court, conclusively presumed that petitioner was liable to lose his $5,000 and that he was not entitled to the opportunity to be heard and to enforce and protect his rights. This is not due process of law.

Both the Fifth and Fourteenth Amendments to the Constitution of the United States provide that no person shall be deprived of property without due process of law. The New Jersey Courts have deprived your petitioner of $5,000 without due process of law and therefore violated the proscription against that provided for by the Fifth and Fourteenth Amendments to the Constitution.

CONCLUSION

This case is of great national importance because the states must not be permitted to enact or enforce laws that infringe upon or violate the rights guaranteed to each of their citizens by the United States Constitution. The Constitution is more then just a good document, it is the supreme document from which all of our laws are derived. Your petitioner most respectfully urges that a writ of certiorari be granted.

Respectfully submitted,

Peter Roehsler
Petitioner, pro se

January 10, 2003

APPENDIX A

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

No. A-6486-00T3

MIDDLESEX COUNTY HEALTH DEPARTMENT
Plaintiff - Respondent

vs.

PETER ROEHSLER
Defendant - Appellate

On Appeal from Superior Court of New Jersey,
Law Division, Middlesex County, L-274-01

Submitted June 3, 2002
Decided and Filed June 11, 2002

Before: Dennis J. Braithwaite and Donald S. Coburn
Judges of the Appellate Division

* * * * * * * * * * *

PER CURIAM

On October 2, 2000, plaintiff attempted to perform a warrantless recycling compliance inspection at defendant's property, known as Viking Terminal,

pursuant to N.J.S.A. 13:1E-1 et seq.; N.J.S.A. 26: 3A-21 et seq.; and N.J.A.C. 7:1G-1.5. Defendant refused to give consent to the inspection. As a result, plaintiff filed a verified complaint in the Law Division seeking the right to carry out the inspection and requesting attorney's fees for the costs involved in prosecuting the action. An order to show cause was issued, defendant filed an answer, and, on the adjourned return date of the order to show cause, the court granted the relief sought in the complaint, including an award of $5,000 in counsel fees. Defendant appeals, and we affirm.

The facts are not in dispute. Viking Terminal is a large industrial park containing defendant's marine supply business and several other commercial tenants involved in activities likely to generate highly regulated waste products such as motor oil, coolants, chemicals, metals and tires, materials which, if not properly recycled or disposed of, can pose a dangerous threat to the environment. As already noted, when plaintiff's inspector arrived to perform a warrantless inspections of the premises, defendant refused to comply.

On appeal, defendant offers the following arguments:

POINT I

COURT BELOW HAS ERRED BY HOLDING THAT A TENUOUS RELATIONSHIP (THAT THEY GENERATE GARBAGE) TO A INTENSIVELY REGULATED INDUSTRY IS SUFFICIENT TO PERMIT WARRANTLESS SEARCHES OF ANY BUSINESS.

POINT II

WHERE COURT BELOW HAS HELD THAT DEFENDANT-APPELLANTS POSITION IS "CERTAINLY NOT FRIVOLOUS", IT IS ERROR TO AWARD COSTS AND FEES. THE NET EFFECT OF THIS AWARD IS TO CHILL LEGITIMATE DESENT(SIC) OF THE POPULACE TO GOVERNMENT ACTION.

POINT III

WHERE COURT BELOW HAS AWARDED COUNSEL FEES TO PLAINTIFF-RESPONDENT WITHOUT NOTICE OR MOTION, IT HAS DENIED DEFENDANT- APPELLANT'S RIGHT TO DUE PROCESS.

After considering the record and briefs, we are satisfied that all of defendant's arguments are without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E). However, we add the following comments with respect to the award of counsel fees.

N.J.S.A. 13:1E-9(d)(2) provides for a fee award in cases where an inspection is blocked by the defendant. After the court rendered its oral opinion allowing the inspection, plaintiff submitted a conforming order, which included a request, supported by counsel's certification and billing records, for $12,490.46 in fees. Defendant received those documents and wrote to the

court, objecting on the ground of lack of notice, and further arguing that a fee award was inappropriate because the court had acknowledged that his position was not frivolous. Rather than requesting an opportunity to appear in court, defendant simply urged a rejections of the fee request, without questioning in any respect the amount sought. Nonetheless, the trial court reduced the fee award to $5,000. Obviously, defendant had notice of the application, therefore, his third point has no factual support.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.

/s/James Flynn
Clerk of the Appellate Division

APPENDIX B

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MIDDLESEX COUNTY

Docket No. MID-L-274-01

MIDDLESEX COUNTY HEALTH DEPARTMENT
Plaintiff,

v.

PETER ROEHSLER
Defendant.

Argued February 16, 2001 and July 6, 2001
Decision July 6, 2001

Opinion by Melvin L. Gelade, J.S.C.

* * * * * * * * * * * *

The opinion begins on page 15, line 16 of the transcript of July 6, 2001:

THE COURT: All right, The - as - as I read the - the statute in question, which is 13:1D-9d, which gives the county Health Department the authority to conduct warrantless searches to enter and inspect the building or place for purposes of investigating actual or suspected sources of pollution of the environment and

ascertaining compliance or noncompliance with codes -- codes, rules and regulations of the Department of Environmental Protection and in this case the county Health Department, which acts in their stead, for me to -- Mr. Roehsler, you have I think articulated in your papers the issues very clearly. You've cited the cases. You've done as fine a job as I think a lawyer could have done under these circumstances. And certainly this is not a -- not a frivolous case.

But on the other hand, I do have a department which is charged with the public protection of the environment and in which the facilities involved in the handling, storage and use of solid waste including recycling centers and landfills are highly regulated and what goes into those landfills is highly regulated. And while it can to some extent be enforced at the point of delivery, there's also in -- in the case of businesses, which could be the source of pollutants, I believe there's a connection between the highly regulated industry, the protection of the public interest and the need for the Health Department in this case to have access to those companies in order to fulfill their mission of protecting the public.

And for that narrow reason I -- I'm going to find that the plaintiff has established a basis under the statute for making the inspection; that the inspection will only have -- permit the county Health Department access to the business portions of the property, not to Mr. Roehsler's home. And further, that at any time that the plaintiff Health Department inspects the premises that Mr. Roehsler or a representative of Mr. Roehsler

will be permitted to accompany the inspector on those inspections.

On the other hand, I – I want to make it clear that when I say the – the home I'm talking about the living dwelling space of Mr. and Mrs. Roehlser, not that I live on the entire property and therefore, the entire acreage and all the businesses contained are part of my residence. I want to make it clear that we're talking about the living space. Nobody's going to come to your home, sir, and disturb you.

But I – I'm going to grant the application of the Health Department for an order, as I've said, permitting them to enter the property and have access to do the inspections under N.J.S.A. 13:1D-9D. Again, accompanied by either Mr. Roehsler or a designated representative at that time.

So Miss Mercado, if you could prepare an order and submit it?

MS. MERCADO: Yes, Your Honor.

MR. ROEHSLER: Your–

MS. MERCADO: I have one more just clarification. If in that order I may set a date by when the inspection should be completed by just so that the inspection isn't prolonged, you know, until the end of the year. If we could like set maybe it by in a month and a half if the inspection is – it does take place in the order?

THE COURT: Well, I would - I would suspect that you can do that within 30 days.

MS. MERCADO: Okay

MR. ROEHSLER: Your Honor, I would request that you stay your order pending our opportunity to appeal.

THE COURT: That application is denied. I don't see any reason to stay it. But you can apply to the Appellate Division for an emergency.

MR. ROEHSLER: Okay.

THE COURT: Okay?

MR. ROEHSLER: Thank you.

THE COURT: Thank you very much.

MS. MERCADO: Thank you, Your Honor.

End

APPENDIX C

SUPREME COURT OF NEW JERSEY

C-222 September Term 2002
53,320

MIDDLESEX COUNTY HEALTH DEPARTMENT
Plaintiff-Respondent,

v.

PETER ROEHSLER
Defendant-Petitioner

Filed October 17, 2002

On Petition for Certification

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-6486-00 having been submitted to the Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied, with costs; and it is further

ORDERED that the appeal filed in the within matter is dismissed pursuant to Rule 2:12-9.

WITNESS, the Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 15th day of October, 2002.

/s/ Stephen Townsend
Clerk of the Supreme Court

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APPENDIX D

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – MIDDLESEX COUNTY

Docket No. MID-L-274-01

MIDDLESEX COUNTY HEALTH DEPARTMENT

v.

PETER ROEHSLER

Order of Judge Melvin L. Gelade
Filed July 20, 2001

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THIS MATTER having been opened to the court by Weiner Lesniak, attorneys for plaintiff, the Middlesex County Health Department ("the Health Department"), with Paula J. Mercado, Esq., appearing on behalf of the Health Department, in the presence of defendant Peter Roehsler ("defendant"), appearing pro se, on an application for an Order authorizing the Health Department to enter defendant's property, Viking Terminal located on Jernee Mill Road in Sayreville, New Jersey, for the purposes of conducting compliance inspections pursuant to the Health Department's powers of compliance monitoring and enforcement, and the court having considered the Verified Complaint, supporting and opposing Briefs and Certification, and the court considering the arguments of counsel and of defendant, and the court having rendered an oral decision on July 6, 2001, which is incorporated herein by reference, and for good cause shown:

It is on this 20th day of July, 2001,

ORDERED that the Health Department is authorized to enter defendant's property, Viking Terminal, for the purpose of conducting compliance recycling inspections pursuant to the Health Department's powers of compliance monitoring and enforcement;

ORDERED that defendant shall allow the Health Department to enter all areas of Viking Terminal, not including the private dwelling space of defendant and

that of his family, for the purpose of conducting compliance recycling inspections of Viking Terminal, and that defendant, or an individual designated by defendant, may accompany the Health Department's officials and/or representatives in conducting such inspection;

ORDERED that the Health Department's routine compliance inspections of Viking Terminal is to be completed no later than thirty (30) days from the date of entry of this Order;

ORDERED that defendant shall be obligated to pay the attorneys fees and court costs incurred by the Health Department in investigating and prosecuting this matter, in the amount of $5,000.00 if defendant is not successful with appealing this decision. If defendant is successful upon appealing this decision and this court's decision is reversed then defendant does not have to pay the $5,000.00.

IT IS FURTHER ORDERED that counsel for plaintiff shall serve a true copy of this Order upon defendant by certified mail, return receipt requested, and by regular mail, within 7 days of its receipt by counsel for the Health Department.

/s/ Honorable Melvin L. Gelade, J.S.C.

APPENDIX E

July 16, 2001

Hon. Melvin L. Gelade, J.S.C.
Middlesex County Superior Court
One John F. Kennedy Square
Chambers #201
New Brunswick, New Jersey 08903

RE: Middlesex County Health Department
v. Peter Roehsler
Docket No. MID-L-274-01

Dear Judge Gelade:

Pursuant to the five day rule, this Defendant strenuously objects to the entry of the proposed form of Order submitted by Paula Mercado, Esquire.

The Court has ruled and Ms. Mercado now, without notice, seeks to reopen this matter. Indeed, she had ample opportunity to make her motion before Your Honor in open court on July 6th, 2001.

As Your honor stated from the bench, my position is not frivolous, and for that reason alone there is no justification for after the fact award of fees. I respectfully urge Your Honor to redact Ms. Mercado's Order in as far as it refers to fees and costs.

Respectfully,
/s/ Peter Roehsler

APPENDIX F

Constitutional Provisions:

Fourth Amendment: The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Fifth Amendment: No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Fourteenth Amendment, Section 1: All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

N.J.S.A. 13:1D-9 states: The department shall formulate comprehensive policies for the conservation of the natural resources of this State, the promotin of enviornmental protection and the prevention of polution of the enviornment of the State. The department shall in addition to the powers and duties vested in it by this act or by any other law have the power to:

d. Enter and inspect any building or place for the purpose of investigating an actual or suspected source of pollution of the environment and ascertaining compliance or noncompliance with any codes, rules and regulations of the department.

N.J.S.A. 34:5A-29b states: The Department of Environmental Protection shall have the right to enter an employer's facility during the normal operating hours of the facility to determine compliance with subsection b. of section 7 and section 9 of this act, and any rules and any regulations adopted pursuant thereto.

N.J.A.C. 7:1G-1.5 states: Pursuant to N.J.S.A. 13:D-9 and 34:5A-29b, the Department shall have the authority to enter any business premises or building during normal hours or other reasonable time to determine compliance with the rules and regulations of the Department hereunder. Failure to permit such inspection after presentation of official credentials is an offense punishable under N.J.S.A. 2C:29-1.

N.J. Court Rule 4:42-1(c) states: Settlement on Notice. In lieu of settlement by motion or consent, the party proposing the form of judgment or order may forward the original thereof to the judge who heard the matter and shall serve a copy thereof on every other party not in default together with a notice advising that unless the judge and the proponent of the judgment or order are notified in writing of specific objections thereto within 5 days after such service, the judgment or order may be signed in the judge's discretion. If no such objection is timely made, the judge may forthwith sign the judgement or order. If objection is made, the matter may be listed for hearing in the discretion of the court.

Comment to Rule 4:42-1(c) states in part: This paragraph was amended, effective September 1977, to make clear that the granting of a hearing on the form of order is a matter within the court's discretion. The trial judge is free to enter the order without hearing and despite objections if, for example, he is satisfied that the form comports with his directives and the objections are frivolous or, on the other hand, if he is satisfied that

the objections are meritorious, in which case he may himself amend the form of order as submitted. It should, of course, be pointed out that the trial court is always free to enter or modify the form of order as submitted where the objection raised by the opposing party fails to state the reasons therefor. It is, of course, clear that an order should never be either submitted or signed under this rule unless it memorializes court dispositions, follows a default or has all parties' consent endorsed thereon. Sylvia Pressler, J. A. D.